

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ann H. Shafnacker

91-03261

Name of Respondents

Raymond. James & Associates, Inc.
Peter Bucchieri
Claude Lochet
Investment Timing & Research, Inc.
Bucchieri & Lochet, Inc.
Investment Management and Research, Inc.

REPRESENTATION

For Claimant Ann H. Shafnacker ("Claimant"): T. Christopher Donnelly, Esq. of the law firm of Donnelly, Conroy and Gelhaar.

For Respondents Investment Management and Research, Inc. ("IMR") and Raymond James & Associates, Inc. ("RIA"): Peter S. Terris, Esq. and Helen A. Robichaud, Esq. of the law firm of Palmer & Dodge.

For Respondents Peter Bucchieri ("Bucchieri"), Bucchieri and Lochet, Inc. ("B&L") and Investment Timing & Research, Inc. ("ITR"): Grover S. Parnell, Esq. of Davis, Malm & D'Agostine.

Respondent Claude Lochet ("Lochet") was not represented by counsel nor did he attend the hearings.

CASE INFORMATION

Statement of Claim filed: October 8, 1991

Claimant's Submission Agreement signed on: October 5, 1991

Joint Statement of Answer and Motion to Dismiss filed by Bucchieri and ITR on: December 26, 1991

Respondents Bucchieri and ITR did not file Submission Agreements.

Respondents RJA and IMR neither filed answers nor signed Submission Agreements: instead, on December 6, 1991 they filed their Motion to Dismiss.

Respondent Locket did not file an answer nor did he sign a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions:	February 23, 1993 - two sessions
	February 24, 1993 - two sessions
	April 6, 1993 - two sessions
	April 7, 1993 - two sessions
	April 27, 1993 - two sessions
	April 28, 1993 - one session
	May 14, 1993 - one session

Hearing Location: NASD Office - Boston, Massachusetts

CASE SUMMARY

Claimant, a retired school teacher, alleged that she had no investment experience and when she received an inheritance from her father she informed Locket that she wanted the money conservatively invested. Claimant said she told Locket that her goal was to invest the money conservatively so that it produced a reasonable monthly income for her to live on. Claimant alleged that she went to Respondent Locket and Bucchieri as she wanted to have her money handled by a local firm. Claimant alleged that Respondents invested her money in three unsuitable limited partnerships, several unsuitable mutual funds and an unsuitable Managed Option Account Program. Claimant alleged that Respondents never disclosed the risk related to these investments nor the large commissions plus management fees that Respondents would be receiving. Claimant alleged that Respondents were not concerned with her well being but rather were motivated by fee generation. Claimant alleged that Respondents breached their fiduciary duty owed to the Claimant as they failed to make full and fair disclosures, violated their duty of good faith and fair dealing and failed to conduct themselves in accordance with high ethical and moral standards. Claimant alleged that Respondents committed common law fraud and statutory fraud as the Respondents made unsuitable investments, improperly switched from load mutual funds to other load mutual funds, churned Claimant's accounts, falsified account documents, repeatedly lied to Claimant and mislead her concerning the status of her investments. Claimant alleged that Respondents breached the contract they had with her. Claimant alleged that Respondents engaged in deceptive and unfair acts and practices. Claimant alleged that as a matter of agency law that IMR, RJA, ITR and B&L are responsible for the conduct of Bucchieri and Locket and all damages incurred by Claimant during the pertinent time

period. Claimant alleged that IMR and RJA failed to supervise Bucchieri and Lochet as well as Claimant's accounts.

Respondents RJA and IMR maintained that Claimant's claim should be barred as it does not meet with the eligibility requirements under Section 15 of the Code of Arbitration Procedure. Respondents RJA and IMR maintained that Claimant's claim is barred by all relevant statutes of limitation. Respondents RJA and IMR maintained that the investments were suitable for Claimant, that the trading was not excessive, the risks were explained to Claimant and she made the decision to enter into the investments that she now complains of. Respondents RJA and IMR categorically denied all allegation of wrongdoing and specifically denied all allegations of fraud, deceptive practices, breach of contract, breach of fiduciary duty and negligence.

Respondents Bucchieri, ITR and B&L maintained that Claimant's claim should be barred since the majority of the events alleged as wrongful by Claimant occurred more than six years before Claimant's claim was filed. Respondents Bucchieri, ITR and B&L maintained that all investments made on behalf of Claimant were suitable at the time the investments were made and that Claimant is using 20/20 hindsight to place the blame on the Respondents. Respondents Bucchieri, ITR and B&L maintained that they did not breach their fiduciary duty owed to Claimant, they did not breach their contract with Claimant, and they did not fail to disclose the risk attendant to each investment. Respondents Bucchieri, ITR and B&L maintained that they tried to do the best they could for the Claimant, but the investments simply did not do as well as Standard and Poor's or the Dow Jones. Respondent Bucchieri, ITR and B&L maintained that Claimant's account was not churned.

Respondent Lochet did not submit an answer.

RELIEF REQUESTED

Claimant requested the following damages in her statement of claim: compensatory damages in the amount of \$305,653.00, interest in the amount of \$71,000, attorneys' fees, costs and punitive damages in the amount of \$1,000,000.

Respondents Bucchieri, ITR, B&L, RJA, and IMR requested that their respective Motion to Dismiss be granted and that Claimant's claim be denied in its entirety with all costs and attorneys' fees assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

The Panel hereby grants Respondents' Motion to Decline Jurisdiction with respects to any and all occurrences or events occurring six years or more before Claimant's claim was filed.

Respondent Claude Locket did not file an answer or an executed submission agreement. Upon review of the file, it is determined that Locket was not properly served with the Statement of Claim or Notice of the Hearing; therefore, Respondent Locket is hereby dismissed without prejudice.

Respondents Bucchieri, ITR, and B&L did file a Statement of Answer/Motion to Dismiss, but did not file properly executed submission agreements, but did appear at the hearing and were represented by counsel. Pursuant to the by-laws of the NASD, the Panel determined that Respondents Bucchieri and ITR were required to submit to this arbitration, notwithstanding their failure to submit executed submission agreements. Therefore, Bucchieri and ITR are bound by the Panel's rulings and determinations.

Respondents RJA and IMR did not file an answer or submission agreements, however, they did file a Motion to Stay Claimant's Request for Documents, did file a Motion to Decline Jurisdiction, and were represented by counsel at the hearing. Pursuant to the by-laws of the NASD, the Panel determined that Respondents RJA and IMR were required to submit to this arbitration, notwithstanding their failure to execute submission. Therefore, RJA and IMR are bound by the Panel's rulings and determinations.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, and hearing the arguments and considering all the submissions filed by the parties, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents Peter Bucchieri, Investment Timing and Research, Inc., Bucchieri and Locket, Inc., Raymond James & Associates, Inc. and Investment Management & Research, Inc. are jointly and severally liable to the Claimant and shall pay to Claimant the sum of TWO HUNDRED TEN THOUSAND AND 00/100 DOLLARS (\$210,000.00); inclusive of interest.
2. That Respondents Peter Bucchieri, Investment Timing and Research, Inc., Bucchieri and Locket, Inc., Raymond James & Associates, Inc. and Investment Management & Research, Inc. are jointly and severally liable to the Claimant and shall pay to Claimant the sum of NINE THOUSAND THREE HUNDRED TWENTY-NINE 00/100 DOLLARS (\$9,329) for expert witness fees.

3. That Respondents Peter Bucchieri, Investment Timing and Research, Inc., Bucchieri and Lochet, Inc., Raymond James & Associates, Inc. and Investment Management & Research, Inc. are further liable, jointly and severally, to Claimant for interest at the rate of twelve percent (12%) per annum from this date of this Award to the date of payment.
4. That Claimant's claim for punitive damages is denied in its entirety.
5. The Claimant's relief requests not otherwise provided for herein are denied.
6. Each of the parties shall bear their respective costs and expenses incurred, other than those specifically provided for herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

12 hearing sessions x \$1000 = \$12,000

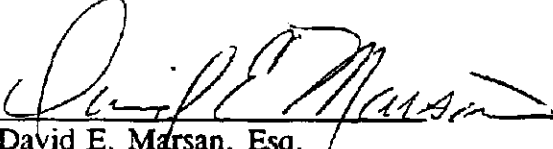
Pursuant to Section 43(c) of the Code forum fees shall be split equally between the Claimant and Respondents. Claimant is entitled to offset her forum fees of \$6,000 with her hearing session deposit of \$1000 previously deposited, so that the amount due from the Claimant is \$5,000.

Respondents are jointly and severally assessed forum fees in the amount of \$6,000.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature
Name

Public/Industry


David E. Marsan, Esq.

Public Arbitrator

Date of Decision: June 16, 1993

3. That Respondents Peter Bucchieri, Investment Timing and Research, Inc., Bucchieri and Lochet, Inc., Raymond James & Associates, Inc. and Investment Management & Research, Inc. are further liable, jointly and severally, to Claimant for interest at the rate of twelve percent (12%) per annum from the date of this Award to the date of payment.

4. That Claimant's claim for punitive damages is denied in its entirety.

5. The Claimant's relief requests not otherwise provided for herein are denied.

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Concurring Arbitrator's Signature
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Public/Industry



S. Lawrence Gwin, Jr., Esq.

Public Arbitrator

Date of Decision: June 16, 1993

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Concurring Arbitrator's Signature
Name

Public/Industry


Lowell A. Warren, Jr.


Industry Arbitrator

Date of Decision: June 16, 1993